

**AN ORDINANCE
SUBMITTED BY DEBI STARNES**

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A RESTATED COMMERCIAL FACILITIES SUBLEASE BY AND AMONG THE DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA, GEORGIA, THE CITY OF ATLANTA, GEORGIA AND CV UNDERGROUND, LLC; FOR THE PURPOSE OF PERMITTING THE SUBLESSEE OF UNDERGROUND ATLANTA TO EXTEND THE LEASE TERM IN TEN-YEAR INCREMENTS TO A TOTAL LEASE TERM OF 99 YEARS; AND FOR OTHER PURPOSES.

WHEREAS, the Downtown Development Authority of the City of Atlanta, Georgia (the "Authority") and the City of Atlanta, Georgia (the "City") are parties to a Lease Agreement, dated as of August 1, 1986, pursuant to which the City leases a festival market place (the "Underground Project") located in Atlanta, Georgia from the Authority; and

WHEREAS, the City and the Authority have entered into the Amended and Restated Commercial Facilities Sublease dated April 5, 1999 (the "Original Sublease") with Underground Festival, Inc. and CV Underground, LLC ("Sublessee"); and

WHEREAS, the Sublessee has explained that the lease term of the Original Sublease precludes Sublessee from financing or otherwise finding means to invest in significant improvements to the Underground Project that will be needed to provide better for the Underground Project's long term viability; and

WHEREAS, the City has determined that it is in the best interest of the City that the Authority and the City enter into a Restated Commercial Facilities Sublease with the Sublessee (the "Restated Sublease"), to provide for periodic 10 year extensions of the term of the Sublessee's occupancy of the Underground Project;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA as follows:

1. That the Mayor be and is hereby authorized to execute on behalf of the City of Atlanta, Georgia, the Restated Sublease, which shall be in substantially the form as attached hereto as Exhibit "A."
2. The Mayor and officers of the City are hereby requested to do any and all things and to execute any and all documents required to be done and executed in connection with the issuance of the execution, delivery and performance of the Restated Sublease.
3. That all other ordinances or resolutions or parts of ordinances or resolutions, to the extent in conflict herewith, be and are hereby repealed.

RESTATED COMMERCIAL FACILITIES SUBLEASE

BY AND AMONG

DOWNTOWN DEVELOPMENT AUTHORITY OF
THE CITY OF ATLANTA, GEORGIA

THE CITY OF ATLANTA, GEORGIA

AND

CV UNDERGROUND, LLC

RESTATED COMMERCIAL FACILITIES SUBLEASE

THIS RESTATED COMMERCIAL FACILITIES SUBLEASE, made and entered into as of this _____ day of _____, 2001, by and among the DOWNTOWN DEVELOPMENT AUTHORITY OF THE CITY OF ATLANTA, GEORGIA, a public body corporate and politic duly created and organized pursuant to the Downtown Development Authorities Law (1981 Ga. Laws 1744, codified at O.C.G.A. § 36-42-1 et seq.) (the "DDA"), the CITY OF ATLANTA, GEORGIA, a municipal corporation and political subdivision of the State of Georgia (the "City"), and CV UNDERGROUND, LLC, a limited liability company duly organized and existing under Georgia law (the "Sublessee").

W I T N E S S E T H:

WHEREAS, pursuant to the Charter of the City (1973 Ga. Laws 2188) (the "Charter"), the City has the power to lay out, open, extend, widen, narrow, establish or change the grade of, vacate, abandon, or close, construct, pave, repave, curb, gutter, adorn with shade trees, otherwise improve, maintain, repair, clean, prevent erosion of, and light, streets, alleys, sidewalks and walkways within the City and to acquire land for such improvements;

WHEREAS, pursuant to the Charter, the City has the power to acquire, lease, construct, operate, maintain, regulate, control, and dispose of public ways, parks, public grounds, markets and market houses, public buildings, auditoriums and recreational and sport institutions, agencies and facilities and any other public improvements, and to regulate use thereof;

WHEREAS, pursuant to the Charter, the City has the power to regulate or restrict the sale, lease, rental, use or solicitation of any real or personal property and the presentation of any services or spectator activities;

WHEREAS, pursuant to the Charter, the City has the power to make contracts with the federal, state, city and county governments and their authorities and other agencies for constructing, expanding, examining, and operating any project or facility, or performing any function, which the City may be authorized by law to provide or perform;

WHEREAS, pursuant to the Charter, the City may exercise and enjoy all of the powers, functions, rights, privileges and immunities necessary or desirable to promote or protect the safety, health, peace, security, good order, convenience, morals and general welfare of the City and its inhabitants;

WHEREAS, pursuant to the Charter, the City may exercise all implied powers necessary to carry into execution all powers granted in the Charter and to exercise all powers now or in the future authorized to be exercised by other municipal governments under the Constitution or

general laws of the State and to do, perform and render all things necessary or convenient to the carrying out of the objects of the powers, duties and requirements set forth in the Charter;

WHEREAS, pursuant to Article IX, Section II, Paragraph III of the Constitution of the State of Georgia, the City has the power to provide street and road construction and maintenance, including curbs, sidewalks and street lights and to provide parks, recreational areas, programs and facilities;

WHEREAS, pursuant to the provisions of O.C.G.A. § 36-34-3, the City has the power in the interest of the health and general welfare of its citizens to construct, lease, own, regulate, operate, improve, open, close or extend public streets, alleys, sidewalks, parks, recreation grounds, parking areas, parking buildings, grandstands and stadium buildings used or useful for sports, buildings used or useful for housing fairs and exhibits, and buildings used or useful for public amusement purposes, together with facilities or buildings used for any combination of the above and may contract with any other political subdivision for the joint use of any of such facilities;

WHEREAS, pursuant to O.C.G.A. § 36-60-1 et seq., the City has the power to develop any slum area pursuant to the urban redevelopment powers granted therein;

WHEREAS, the DDA is authorized by O.C.G.A. § 36-42-8(3) to make and execute contracts, agreements and other instruments necessary or convenient to the exercise of its powers, including, but not limited to, contracts for the lease of projects and contracts with respect to the use of projects;

WHEREAS, the DDA is authorized by O.C.G.A. § 36-42-8(15) to lease any real property, personal property or fixtures or any interest therein to third parties and to make contracts with respect to the use thereof;

WHEREAS, the City has heretofore formulated its Underground Atlanta Urban Redevelopment Plan (the "Redevelopment Plan") to provide for the development, construction, rehabilitation, financing and management of the Underground Atlanta Festival Marketplace (the "Project"); and

WHEREAS, in furtherance of the Redevelopment Plan, the City and/or the DDA acquired certain parcels of real property lying and being in Land Lot 77 of the 14th District of Fulton County, Georgia, and the buildings located thereon, which property is more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Project Site"); and

WHEREAS, the City, as lessee, leased a portion of the Project Site from the DDA, as lessor, pursuant to the terms of the Lease Agreement, by and between the DDA and the City dated as of August 1, 1986, and recorded in Book 10273, Page 163 in the Office of the Clerk of the Superior Court of Fulton County (the "Recording Office") as amended by that certain Consent of the City of Atlanta, Georgia and the Downtown Development Authority of the City of

Atlanta dated August 14, 1986 and recorded in Book 10273, Page 238 in the Recording Office and by that certain First Amendment dated January 30, 1989 and recorded in Book 12273, Page 153 in the Recording Office (such Lease Agreement, as so amended, is hereby referred to as the "Principal Lease Agreement"); and

WHEREAS, the City subleased a portion of the Project Site to Underground Festival, Inc., a Georgia corporation duly organized and existing under Georgia law ("UFI"), to act as a private redeveloper for the development of office, retail and food and beverage service facilities in the Project pursuant to the terms of a Commercial Facilities Sublease (the "Commercial Facilities Sublease") by and among the City, the DDA and UFI dated as of September 7, 1988 and recorded in Book 12273, Page 1 in the Recording Office; and

WHEREAS, the Commercial Facilities Sublease was amended by amendments dated as of January 30, 1989, September 6, 1989, October 12, 1990, October 12, 1990, and October 1, 1992, and by that certain Seventh Amendment dated as of April 5, 1999, among the City, DDA and UFI (the "Leaseback Agreement") (the foregoing amendments including the amendment set forth in the Leaseback Agreement are referred to collectively as the "Amendments"; the Commercial Facilities Sublease, as amended by the Amendments, is hereafter referred to as the "Original Sublease"); and

WHEREAS, contemporaneously with the execution of that Amended and Restated Commercial Facilities Sublease dated as of April 5, 1999, by and among DDA, the City, UFI, and Sublessee (the "Amended and Restated Sublease"), the City, for itself and as agent for the DDA, acquired from UFI certain property of UFI in cancellation of certain indebtedness owed by UFI to the City and the DDA including (i) fee simple title in and to certain real property more particularly described on Exhibit "C" attached hereto, and improvements located thereon, which real property and improvements thereon have heretofore been and shall continue to be a part of the Project, (ii) the interest of UFI in the improvements located on the property heretofore subleased to UFI pursuant to the Original Sublease, and (iii) the leasehold estate of UFI under that certain "Hotel Lease Agreement" (as hereinafter defined) (the property described in the preceding clauses (i), (ii), and (iii) being hereinafter sometimes referred to as the "Acquired Property"); and

WHEREAS, the conveyance of the Acquired Property by UFI to the City as agent as aforesaid was done in contemplation and consideration of a restructuring of the Project involving, among other things, (i) the immediate leasing and subleasing of the Acquired Property back to UFI pursuant to the Leaseback Agreement, (ii) the assignment by UFI (with the consent of the City and the DDA) of its rights, title and interest under the Original Sublease to Sublessee and the assumption by Sublessee of the obligations and duties of UFI under the Original Sublease from and after the date of such assignment by UFI pursuant to the terms of that certain Assignment and Assumption Agreement of even date herewith among the City, DDA, UFI and Sublessee (the "Assignment and Assumption Agreement"), and (iii) the amendment and restatement of the Original Sublease pursuant to the terms of the Amended and Restated Sublease; and

WHEREAS, UFI joined in the Amended and Restated Sublease for the purpose of evidencing its consent and agreement with the terms of the restructuring as hereinabove described; and

WHEREAS, the City, the DDA and Sublessee desire to amend and restate the Amended and Restated Sublease to provide for, among other things, a mechanism for the extension of the term of the Amended and Restated Sublease and to restate the Amended and Restated Sublease as so amended as the Restated Commercial Facilities Sublease;

NOW, THEREFORE, for and in consideration of the foregoing premises, the sum of TEN AND NO/100 DOLLARS (\$10.00), and the covenants, representations, warranties and agreements set forth herein, the parties hereto do hereby agree as follows in order to state the obligations, duties, liabilities and rights of the DDA, the City and the Sublessee and do hereby amend and restate the Amended and Restated Sublease, in its entirety, so that the Amended and Restated Sublease shall be hereafter referred to as the Restated Commercial Facilities Sublease and shall read as follows:

ARTICLE I

EXHIBITS AND DEFINITIONS

Section I.01. Exhibits. Attached hereto and made a part hereof are the following exhibits:

- (a) Exhibit A--Legal description of the Project Site.
- (b) Exhibit B--Description of a portion of the Subleased Property.
- (c) Exhibit C--Legal description of the Acquired Fee Property.
- (d) Exhibit D--Legal description of the Coca-Cola Pavilion Property.
- (e) Exhibit E--Legal description of the State Air Rights Property.
- (f) Exhibit F--Legal description of certain additional Subleased Property.
- (g) Exhibit G--Affirmative Action Statement.
- (h) Exhibit H--List of Actions, Suits or Proceedings.
- (i) Exhibit I--Legal description of the Hotel Property.

LARGE ATTACHMENT:

DOCUMENT(S),

MANUAL(S)

OR

MAP(S)

NOT COPIED,

**PULL ORIGINAL
FOR COPY OR TO VIEW**